83

Supreme Court, U.S.
FILED
JAN 24 2008
OFFICE OF THE CLERK

(1)

07-992

In the

SUPREME COURT OF THE UNITED STATES

ALFRED CAMPBELL, III

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for
the Sixth Circuit

WRIT OF CERTIORARI

ALFRED CAMPBELL, III
2704 Gerald Ford West
Cordova, Tennessee 38016
901.218.3963

QUESTIONS PRESENTED

1. Does the requirement to answer questions on United States IRS Form 1040, under penalty of perjury, derive from Internal Revenue Code Criminal Provision 26 U.S.C. § 7203 as the 6th Circuit held in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90)?

2. Is raising the public protection, 44 U.S.C. § 3512(1995), a frivolous issue if raised at Tax Court in defense of penalties and interests claimed owed by the Secretary for Petitioner's refusal to answer the Secretary's questions on Form 1040 for Calender year 2000?

3. If a Notice of Deficiency is issued by the IRS based upon Petitioner's refusal to answer questions on Form 1040 for Calender year 2000, and Petitioner continues to remain silent in response thereto, does any administrative claim by the Secretary for penalties derived therefrom, sent to Petitioner, withstand 44 U.S.C. § 3512(1995)?

PARTIES TO THE PROCEEDING

The caption contains the names of all parties in the case below.

TABLE OF CONTENTS

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING WRIT TO CIRCUIT ... 4

1. Does the requirement to answer questions on United States IRS Form 1040, under penalty of perjury, derive from Internal Revenue Code Criminal Provision 26 U.S.C. § 7203 as the 6th Circuit held in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90) 4

2. Is raising the public protection, 44 U.S.C. § 3512(1995), a frivolous issue if raised at Tax Court in defense of penalties and interests claimed owed by the Secretary for Petitioner's refusal to answer the Secretary's questions on Form 1040 for Calender year 2000 9

3. If a Notice of Deficiency is issued by the IRS based upon Petitioner's refusal to answer questions on Form 1040 for Calender year 2000, and Petitioner continues to remain

silent in response thereto, does any administrative claim by the Secretary for penalties derived therefrom, sent to Petitioner, withstand 44 U.S.C. § 3512(1995) 13

CONCLUSION 18

Addendum

Tax Court Order ..... App. 1

Tax Court Transcript ..... App. 3

Judgment 6th Circuit ..... App. 28

10th Circuit Pond decision ..... App. 34

page #

TABLE OF AUTHORITIES

Dole v. United Steelworkers of America, 494 U.S. 26, 33(1990) 4

Garner v. U.S., 424 U.S. 648 (1976) 6,7

Lisenba v. California, 314 U.S. 219, 241 (1941) 7

Pond v. CIR, T.C. Memo 2005-255, WL 18928 9,10,14

U.S. v. Wunder, 919 F.2d 34 (6th Cir. 90) 1,3,8

U.S. v. Sullivan, 274 U.S. 259 (1927) 5,7

U.S. v. Chisum, 06-7082 at 12 10,11,14

STATUTES INVOLVED

26 U.S.C. § 6011 4,14

26 U.S.C. § 6012 3,4

26 U.S.C. § 7203 3,4,9

26 U.S.C. § 7491(c) 8

44 U.S.C. § 3506(c)(1)(B) 2,15,16,17

44 U.S.C. § 3507 2,8,17

44 U.S.C. § 3512 2,7,8,12,14,17

PETITION FOR WRIT OF CERTIORARI

Alfred Campbell, III respectfully requests that a Writ of Certiorari be issued as to each Question raised by Petitioner from the judgment and order of the United States Court of Appeals for the Sixth Circuit and to reverse the decision by the United States Tax Court and the decision in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90).

OPINIONS BELOW

The decision of the United States Tax Court was entered November 21,2006. The Panel decision was entered October 26, 2007.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was final October 26, 2007.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTION AND STATUTES

Right to remain silent and right to defend the exercise thereof at a later time. The meaning of 44 U.S.C. 3512(1995) and penalties and interest claims pursuant to 26 U.S.C. §§ 6651(a)(1), 6654(a) and 6673.

STATEMENT OF THE CASE

On January 3, 2001, for the Calender Year 2000, the Secretary of the Treasury requested Petitioner to answer a series of questions on Form 1040 with OMB control number 1545-0074 on or before April 15, 2001. After careful review of the request form and that it appeared not to display the information Congress required the Secretary to provide on said Form, pursuant to 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512, Petitioner refused to answer the questions. Petitioner was supported by the Commissioner's statements publicly that Petitioner did not have to provide any information on any Form that did not display compliance with the Paperwork Reduction Act requirements.

The Commissioner, not following his own words, filed a Notice of Deficiency for the year 2000, and gave Petitioner 90 days to answer his claims. Petitioner again remained silent to this administrative claim. Eventually, the IRS claimed Petitioner owed taxes, plus additions of interest and penalties, based upon Petitioner's silence. Petitioner received a Notice of Intent to Levy and Right to Collection Due Process

Hearing. Petitioner timely requested said hearing and claimed the Form 1040 was not in compliance with the Paperwork Reduction Act of 1995 and that the interest and penalty claims were completely erroneous. A Final Determination was issued and Petitioner appealed to the United States Tax Court.

In his petition Petitioner maintained he had no duty to answer the Secretary's questions because the form used to make the request violated every level of criteria Congress demanded the IRS give Petitioner before Petitioner was to answer the Secretary's questions. Tax Court ruled the Paperwork Reduction Act defense was frivolous and sanctioned Petitioner an additional penalty of $ 2500.00. App.2

Petitioner appealed to the Sixth Circuit who, standing on its decision in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90), stated the requirement to answer the Secretary's questions comes from 26 U.S.C. §§ 6012 and 7203, and these provisions withstand 44 U.S.C. § 3512's reach. App. 33

This Petition for Writ of Certiorari to the Sixth Circuit follows.

ARGUMENT SUPPORTING GRANTING OF WRIT

1. Does the requirement to answer questions on United States IRS Form 1040, under penalty of perjury, derive from Internal Revenue Code Criminal Provision 26 U.S.C. § 7203 as the 6th Circuit held in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90)?

In *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 90), decided after this Court's decision in *Dole v. United Steelworkers of America*, 494 U.S. 26, 33(1990) which held tax forms were "typical information collection requests", concluded that this Court was wrong and tax form requests are not subject to the Paperwork Reduction Act of 1980. Id. 38

Its reasoning was that the requirement to provide answers to the Secretary on his Form 1040 was required by both 26 U.S.C. § 6012 and 7203. App. 33 Section 6012 hinges upon section 6011 which directs the Secretary to provide requests for information and then the public is to consider those requests therein. Section 7203 is a criminal provision penalizing the willful failure to provide any answers on any Form required to be made.

Congress directs each Agency, including the IRS, to inform the Public as to why they are asking for certain information and how the Secretary intends to use the information once the target provides the answers to the questions propounded therein. See 44 U.S.C. § 3506(c)(1)(B)[formerly 3504(c)(1980).

"In *United States v. Sullivan*, 274 U.S. 259 (1927), while dealing with the Fifth Amendment claims of Mr. Sullivan in regard to the making of statements to the United States regarding his illegally earned income from the sale of alcohol, this Court stated that:

> "In the decision that this was contrary to the Constitution we are of opinion that the protection of the Fifth Amendment was pressed too far. If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not **on that account** refuse to make any return at all. We are not called on to decide what, if anything, he might have withheld. Most of the items warranted no complaint. It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in

> crime. But if the defendant desired to test that or any other point he should have tested it in the return so that it could be passed upon. He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law" (Emphasis added).

In *Garner v. U.S.*, 424 U.S. 648 (1976), this Supreme Court was wrestling with the Government's use of information obtained from Mr. Garner from his Form 1040.

In *Sullivan*, the Court held that the privilege against compulsory self-incrimination is not a defense to prosecution for failing to file a return at all. But the Court indicated that the privilege could be claimed against specific disclosures sought on a return, saying:

> If the form of return provided **called for answers** that the defendant was privileged from making he could have raised the objection in the return, but could *not on that* account refuse to make any return at all." Id., at 263."

Garner at 651.

The information revealed in the preparation

and filing of an income tax return is, for purposes of Fifth Amendment analysis, is the testimony of a "witness," as that term is used therein. In *Garner,* the Supreme Court stated he disclosed information on his returns instead of objecting, thus his Fifth Amendment claim would be defeated by an application of the general requirement that witnesses must claim the privilege. Id. @ 656

The test for when the privilege can be relied upon after the incriminating testimony is yielded was when the person was denied the "free choice to admit, to deny, or to refuse to answer." *Lisenba v. California*, 314 U.S. 219, 241 (1941) The great majority of persons who file income tax returns do not incriminate themselves by disclosing their occupation. *Garner* @ 661

Since *Sullivan* and *Garner*, Congress passed the Paperwork Reduction Acts of 1980 and 1995, and the Supreme Court made applicable the1980 Act to "tax forms" issued by the IRS. The Commissioner tells the public this is true for all years at irs.gov. Congress said the 1995 Act was to make certain the public was protected regarding all Forms, including third party

requests at issue in Dole.

If the 6th Circuit in *Wunder* is correct, Form 1040, for year 2000, was being used to enforce 26 U.S.C. §7203, which by its very terms is a criminal provision for failure to provide answers on Forms which comply with the law. Not for forms that dont.

The IRS does not inform anyone of this information. If the IRS is bringing Petitioner into danger of the law no matter what he says or does not say, Petitioner was authorized to remain silent and further authorized to raise the public protection provision, 44 U.S.C. § 3512, in defense of claims he should be penalized or owes penalties for failing to provide answers on Form 1040 to the Secretary for Calender year 2000.

The Commissioner had the burden under 26 U.S.C. § 7491(c) to justify the penalty claims to which he did not or could not do. The Commissioner entered no forms in the record that the Commissioner purports to comply with 44 U.S.C. § 3506(c)(1)(b). No forms issued in accordance with the clearance requirements of section 3507. And no forms displaying compliance with section 3512's warning.

Yet, Petitioner was even penalized further for raising the protection from penalty provision, 44 U.S.C. § 3512(a)(1995), by the Tax Court granting the Commissioner's $ 2500 penalty for purportedly raising a frivolous protection claim.

Tax Court refused to recognize the Paperwork Reduction Act of 1995 even after it was told by the 10th Circuit the Form 1040 must comply in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07) App. 39

If Form 1040 was required to display a statement that the request was being made to enforce 26 U.S.C. § 7203, to which it clearly does not, then even more reason why "Notwithstanding any other provision of law, **no person shall be subject to any penalty** for failing **to comply with a collection** of information that is subject to this subchapter" unless it complies with all applicable laws.

This Court should grant this Writ to the Sixth Circuit to publicly state whether the IRS is or is not doing a criminal investigation as the Sixth Circuit says in Wunder the IRS is doing by citing to section 7203.

2. Is raising the public protection, 44 U.S.C. § 3512(1995), a frivolous issue if raised at Tax Court in defense of penalties and interests claimed owed by the Secretary for Petitioner's 'refusal to answer the Secretary's questions on Form 1040 for Calender year 2000?

The 10th Circuit in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07) App. 39, stated that Tax Court was incorrect and that Form 1040 is required to comply with the Paperwork Reduction Act of 1995. Tax Court warned Pond that next time he raised the protection of the Paperwork Reduction Act of 1995, he would be penalized for acting frivolous. In a published decision, the same panel in Pond at the 10th Circuit, on September 25, 2007, *U.S. v. Chisum*, 06-7082 at 12 (slip op.)held:

C. The Paperwork Reduction Act (PRA)

> The PRA, 44 U.S.C. § 3501-20, precludes the imposition of any penalty against a person for "failing to comply with a collection of information" if either (1) it "does not display a valid control number" or (2) the agency fails to alert the person

> that he or she "is not required to respond to the collection of information unless it displays a valid control number." 44 U.S.C. § 3512(a). A § 3512(a) defense may be raised at any time. See id. § 3512(b). Tax forms are covered by the PRA. See Dole v. United Steelworkers of Am., 494 U.S. 26, 33 (1990).
>
> Mr. Chisum contends that "[s]ince there was no proof that Form 1040 was a lawful form under the [PRA], the trial court erred in failing to grant [his] request [at the sentencing hearing] to dismiss the indictment." Aplt. Br. at 29. But the PRA protects a person only "for failing to file information. It does not protect one who files information which is false." Collins, 920 F.2d at 630 n.13 (internal quotation marks omitted). The charges against Mr. Chisum were predicated on the filing of false information, not the failure to file. He is therefore not entitled to relief.

Chisum, pg 12.

So, which is it? How can raising public protection be frivolous in Tax Court where appeals lay to the 6th Circuit and not frivolous where appeals lay to the 10th Circuit? Isn't the Paperwork Reduction Act

of 1995 Federal Law? Isn't it to be applied uniformly? And Tax Court. Isn't the name "United States Tax Court?" Doesn't United States mean uniform when it comes to laws applicable to the States?

Petitioner realizes intelligence of the past has caught up with facts of the present.

This Court should issue a Writ of Certiorari to the Sixth Circuit to direct for all to here and see that raising the public protection of the Paperwork Reduction Act of 1995 is not frivolous, is sound law and policy, and the fact there is no law which withstands 44 U.S.C. § 3512(1995). Obviously, directing the $ 2500 penalty levied by Tax Court be set aside as a further violation of 44 U.S.C. § 3512(1995)[1]

---

[1]Section 3502(14)(1995) names the Court as being one place the protection applies.

3. If a Notice of Deficiency is issued by the IRS based upon Petitioner's refusal and subsequent failure to answer questions on Form 1040 for Calender year 2000, and Petitioner continues to remain silent in response thereto, does any administrative claim by the Secretary for penalties derived therefrom, sent to Petitioner, withstand 44 U.S.C. § 3512(1995)?

The 1995 Paperwork Reduction Act was enacted to strengthen the 1980 Act at issue in *Dole*. The 1995 Act mandates:

> (a) Notwithstanding any other provision of law, **no person shall be subject to any penalty** for failing **to comply with a collection** of information that is subject to this subchapter if
>
> > (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or
> >
> > (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) **The protection provided by this section may be raised** in the form of a complete defense, bar, or otherwise **at any time during the agency administrative process or judicial action applicable thereto**.

See 44 U.S.C. § 3512. See also, *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07)(unpublished); See also *U.S.v. Chisum*, 06-7082, decided September 25, 2007 (published).

The Supreme Court in *Dole* said that "While the grammar of this text can be faulted, its meaning is clear: the public is protected under the Paperwork Reduction Act from paperwork regulations not issued in compliance with the Act, only when those regulations dictate that a person maintain information for an agency or provide information to an agency."*Dole* at 40

The changes to the public protection provision in 1995 removed "fails to maintain and provide" and added "fails to comply..."

26 U.S.C. § 6011 says:

> "When required by regulation prescribed by the Secretary any person made liable for any tax imposed by this title, or with

respect to the collection thereof, shall make a return or statement **according to the forms and regulations** prescribed by the Secretary."

Since at least 1995, Congress, at 44 U.S.C. §3506(c)(1)(B) directs the Director of OMB to "ensure" the IRS application's attached proposed request for income tax information form displays the following criteria:

(i) inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicate the collection is in accordance with the clearance requirements of section 3507; and;

(iii) informs the person receiving the collection of information of;

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether the responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a valid control number[2]

---

[2]P.L. 104-13(1995), pg. 206-207 USCCAN- 1. "Section 3506(c) mandates a detailed information collection evaluation procedure requiring each agency to establish a process within the office designated under subsection (a), independent of program responsibility, to evaluate proposed collections. This office must: Review a collection of information before it is submitted to OMB for review, that includes making an independent evaluation of its need; preparing a description of it, a collection plan, and a burden estimate; pilot testing the collection, if appropriate; and developing a plan for the management and use of the information to be collected; Ensure that information collections are inventoried, display a control number and, when appropriate, an expiration date; indicate the collection is in accordance with the Act; and contain a statement informing the person being asked why the information is being collected, its use, its burden, and whether responses are voluntary, required to obtain a benefit, or mandatory. This requirement is transposed from current law (section 3504(c)(3)) to make it more clearly an agency responsibility, rather than a duty of OMB. Note that this requirement must also be certified to by each agency (see section 3506(c)(3)(F); and Assess the information collection burden of proposed legislation affecting the agency."

See 3506(c)(1)(B)(1995)

Certification is also required by the Internal Revenue Service to show compliance with 44 U.S.C. §§§ 3506,3507 and 3512, along with OMB regulations at 5 CFR 1320.8(b)(3) to which each "certification" falsely states compliance with the list at 3506.

So, how does Petitioner raise the protection provided if raising the protection is forbidden? When is the "any time" stated in 44 U.S.C. § 3512? If the Tax Court and Sixth Circuit are allowed to remain in their lawlessness, the time is never! Why would anyone raise the protection when raising such protection not only does not protect a person from penalties but includes the addition of even more penalties?

As the Tax Court, Commissioner and Sixth Circuit's position in *Wunder* are total nonsense, this Court should Grant a Writ of Certiorari to the Sixth Circuit to decide when the protection can and cannot be raised at any time.

CONCLUSION

Petitioner Alfred Campbell, III, requests this Court issue Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit on the three issues raised herein and for the purpose of reversing the decision by the United States Tax Court in regard to interest, penalties and frivolous penalties, along with directing the Sixth Circuit that the Wunder decision in 1990 are in opposition to this Court's *Dole* decision in 1990 .

Respectfully Submitted

1/23/08 /s/ Alfred Campbell, III

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ALFRED CAMPBELL, III,

Petitioner,

v. Docket No. 21555-05L

CIR,

Respondent

ORDER AND DECISION

Pursuant to the determination of the Court, as set forth in its bench opinion rendered on November 8, 2006, at Washington, D.C., it is hereby

ORDERED that respondent's Motion For Summary Judgment, filed September 20, 2006, as supplemented October 12, 2006, is granted. It is further

ORDERED AND DECIDED that respondent may proceed with collection for the taxable year 2000, as determined in the notice of determination dated October 19, 2005, upon which this case is based. It is further

ORDERED AND DECIDED that petitioner is liable

for a penalty under I.R.C. section 6673(a)(1) in the amount of $2,500.

(Signed) Robert N. Armen, Jr.
Robert N. Armen, Jr.
Special Trial Judge

ENTERED: NOV 21, 2006

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217
November 20, 2006

ALFRED CAMPBELL, III,

Petitioner

v. Docket No. 21555-05L

CIR,

Respondent

Notice of Service of Transcript

Pursuant to Rule 152(b), Rules of Practice and Procedure of this Court, there is transmitted herewith to petitioner and respondent a copy of the pages of the transcript of the hearing of the above case before Special Trial Judge Robert N. Armen, Jr. at Washington, D.C., on November 8, 2006, containing his oral findings of fact and opinion rendered at the conclusion of the hearing.

In accordance with the oral findings of fact and opinion, an order and Decision will be entered for respondent.

Robert R. Di Trolio
Clerk of the Court
SERVED: NOV 21 2006

Bench Opinion by Special Trial Judge Robert N. Armen Jr

(12:13 p.m.)

Alfred Campbell, III 2155-05L

The Court has decided to render oral findings of fact and opinion in this case. And the following represents the Court's oral findings of fact and opinion.

This proceeding was heard as a regular case pursuant to the provisions of Section 7443A(b)(4) of the Internal Revenue Code of 1986, as amended, and Rules 180, 181, and 182 of the Tax Court Rules of Practice and Procedure.

This bench opinion is made pursuant to the authority granted by Section 7459(b) of the Internal Revenue Code of 1986, as amended, and Rule 152 of the Tax Court

Rules of Practice and Procedure.

Hereinafter in this bench opinion, and unless otherwise indicated, all section numbers refer to the Internal Revenue Code of 1986, as amended, and all Rule numbers refer to the Tax Court Rules of Practice and Procedure.

Charles Gorham appeared on behalf of Respondent.

There was no appearance by or on behalf of Petitioner, nor did Petitioner file a written statement pursuant to the provisions of Rule 50(c). However, the Court did have before it Petitioner's Notice of Objection, filed October

25, 2006.

This case is before the Court on Respondent's Motion for Summary Judgment, filed September 20, 2006, pursuant to Rule 121 and Section 6673, and supplemented October 12, 2006.

Petitioner resided at 2704 Gerald Ford West in Cordova, Tennessee, at the time that his petition was filed with the Court. Petitioner continues to reside at this address and has, in fact, resided there at all times relevant to this case, specifically including on February 4, 2004, the date on which Respondent mailed a notice of deficiency to Petitioner. See infra.

The facts relevant to the disposition of Respondent's motion are as follows:

Petitioner's Income Tax Liability for 2000.

Petitioner did not file a Federal income tax return for

2000.

Respondent's examination of Petitioner's Federal tax liability for 2000 culminated in the issuance of a notice of deficiency on February 4, 2004. See sec. 6212.

In the notice, Respondent determined that Petitioner had taxable income in 2000 in the amount of $132,611 and was liable for a deficiency in income tax in the amount of $34,495. (Parenthetically, we note that Respondent gave Petitioner credit for withholding in the amount of $19,604

insofar as Petitioner's ultimate tax liability was concerned; however, the determination of a

statutory
deficiency does not take such withholding into account. See
sec. 6211(b)(1).)
In the notice of deficiency, Respondent also determined that Petitioner was liable for an addition to tax
under Section 6651(a)(1) for failure to file and an addition
to tax under Section 6654(a) for failure to pay estimated
tax.
Respondent sent the notice of deficiency to Petitioner by certified mail at his residence address. The
United States Postal Service delivered the notice on
February 17, 2004. (Parenthetically, we note that
Respondent also sent a copy of the notice to Petitioner's
authorized representative, L. Scott Roberts.)
Petitioner did not file a petition for

redetermination of deficiency with this Court. See sec. 6213(a). Accordingly, on August 9, 2004, Respondent assessed the deficiency, together with additions to tax (i.e., "penalties") and statutory interest. On that same date, Respondent sent Petitioner a statutory notice of balance due, i.e., a notice and demand for payment. Petitioner did not pay the amount due.

Final Notice of Intent to Levy. On December 21, 2004, Respondent sent to Petitioner a Final Notice/Notice of

Intent To Levy and Notice of Your Right to a Hearing (final notice). See sec. 6330(a). The final notice reflected an

outstanding liability of $26,956.56.

Administrative Developments. On January 16, 2005, Petitioner filed with Respondent a Form 12153, "Request for a Collection Due Process Hearing."

On September 29, 2005, a telephone conference was held between Respondent's appeals officer and Petitioner.

Thereafter, on October 19, 2005, Respondent's Appeals Office sent Petitioner a Notice of Determination concerning collection action(s) under Section 6320 and/or 6330 (notice of determination). The notice of determination sustained the proposed levy.

The appeals officer's attachment to the notice of determination includes the following statements:

"In his written appeal, and in four subsequent mailings, the taxpayer indicated he wanted to dispute the liability. In Goza v. Commissioner, 114 T.C. 176 (2000), the Tax Court explained that under Section 6330(c)(2)(B), neither the existence nor the amount of the underlying tax liability can be contested at a collection due process hearing unless the taxpayer did not receive a notice of deficiency for the taxes in question or

did not otherwise have an earlier opportunity to dispute such tax liability. The documentation in the taxpayer's case file indicated he had received a notice of deficiency, so he was advised, in a letter dated September 20, 2005, that it was Appeals' position that he could not dispute the underlying liability in his Collection Due Process hearing. In the same letter, it was explained that the taxpayer's unfounded

claims of legal and procedural defects were indicative of a frivolous collection due process appeal. He was told that frivolous claims, such as his assertion that substitute-for-return assessments under I.R.C. 6020 were invalid due to a lack of legally enforceable regulations, could subject him to monetary sanctions should he pursue them into the courts. The taxpayer was also provided with a copy of the tax court case, Pierson v. Commissioner, 115 T.C. No. 39 (December 14, 2000), as an example of an instance in which such monetary sanctions were leveled."

"On September 29, 2005, a telephonic

collection due process hearing was held with the taxpayer, Alfred Campbell, and Settlement Officer Mark L. Grzesiowski. * * * The taxpayer was then asked if he wanted to

explore a collection alternative, and he said he did not."

Petitioner's Petition. On November 15, 2005, Petitioner filed a petition for levy action. See Sec. 6330(d).

The petition, which is a form document commonly used by tax protestors, challenges the existence or amount of Petitioner's underlying tax liability for 2000. In doing so, it relies heavily on the Paperwork Reduction Act of 1980, 44 U.S.C. Secs. 3501-3520 (2000). Petitioner also alleges in the petition that he did not receive a "statutory" notice of deficiency. However, Petitioner does not deny receiving the February 4, 2004, notice of deficiency, and it is clear that the distinction Petitioner attempts to draw between

a "statutory
notice of deficiency" and a notice of deficiency is nothing
but semantics.
Respondent's Motion for Summary Judgment. As
previously stated, on September 20, 2006, Respondent filed
his Motion for Summary Judgment. Thereafter, on October 12,
2006, Respondent filed a supplement to the motion.

[page 9] Heritage Reporting Corporation
(202) 628-4888

On October 25, 2006, Petitioner filed a Notice of
Objection to Respondent's motion. In his Notice of
Objection, Petitioner continues to adhere to ~~invoke~~ the RNA
Paperwork Reduction Act.
Hearing on Respondent's Motion for Summary

Judgment. Pursuant to notice, Respondent's Motion for Summary Judgment was called for hearing at the Court's motions session in Washington, D.C., on November 8, 2006. Counsel for Respondent appeared and presented argument in support of the motion. In contrast, there was no appearance by or on behalf of Petitioner, nor did Petitioner file a written statement pursuant to Rule 50(c), the provisions of which were noted by the Court in its order calendaring Respondent's motion for hearing.

Summary Judgment. Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681

(1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b).

After carefully reviewing the record, we are

satisfied that there is no genuine issue as to any material fact, and a decision may be rendered as a matter of law.

Accordingly, we shall grant Respondent's Motion for Summary Judgment, as supplemented.

Section 6330 generally provides that the Commissioner cannot proceed with collection by levy until the person has been given notice and the opportunity for an administrative review of the matter (in the form of an Appeals Office hearing) and, if dissatisfied, with judicial review of the administrative determination. See Davis v. Commissioner, 115 T.C. 35, 37 (2000); Goza v. Commissioner, 114 T.C. 176, 179 (2000).

Section 6330(c) prescribes the matters that a person may raise at an Appeals Office hearing. In sum, Section 6330(c) provides that a person may raise collection issues such as spousal defenses, the

appropriateness of the
17 Commissioner's intended collection action, and possible
18 alternative means of collection. Section 6330(c)(2)(B)
19 provides that the existence and amount of the underlying tax
20 liability can be contested at an Appeals Office hearing only
21 if the person did not receive a notice of deficiency for the
22 tax in question or did not otherwise have an earlier
23 opportunity to dispute the tax liability. See Sego v.
24 Commissioner, 114 T.C. 604, 609 (2000); Goza v.
25 Commissioner, supra. Section 6330(d) provides for judicial

review of the administrative determination in the Tax Court or a Federal District Court, as may be appropriate.

Petitioner received the February 4, 2004, notice of deficiency. Thus, Petitioner could have, but did not, file a petition for redetermination of deficiency with this Court. See sec. 6213(a). Section 6330(c)(2)(B) bars Petitioner from challenging the existence or amount of his underlying tax liability in this collection review proceeding because he previously had the opportunity to dispute Respondent's deficiency determinations. See Nestor v. Commissioner, 118 T.C. 162, 165-166 (2002); Thomas v. Commissioner, T.C. Memo. 2003-231.

Even if we were to consider Petitioner's challenges to the existence or amount of his

underlying
liability, Petitioner's arguments invoking the Paperwork
Reduction Act are frivolous and groundless. See James v.
United States, 970 F.2d 750, 753 n.6 (10th Cir. 1992);
United States v. Neff, 954 F.2d 698, 699 (11th Cir. 1992);
Saxon v. Commissioner, T.C. Memo. 2006-52; Holliday v.
Commissioner, T.C. Memo. 2005-240; Freas v. Commissioner,
T.C. Memo. 1993-552; Andreas v. Commissioner, T.C. Memo.
1993-551; see also Wheeler v. Commissioner, T.C. Memo. 2006-
109; Schneller v. Commissioner, T.C. Memo. 2006-100, citing
Pond v. Commissioner, T.C. Memo. 2005-255.
In sum, suffice it to say:

(1) Petitioner is a taxpayer subject to the Federal income tax; see Secs. 1, 7701(a)(1), (14);
and
(2) Petitioner is required to file an income tax return and pay income tax; Secs. 1, 6012(a)(1).
See also Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.")
Petitioner has failed to raise a spousal defense or offer alternative means of collection. These issues are now deemed conceded. Rule 331(b)(4).

Petitioner has also
failed to make a valid challenge to the appropriateness of
Respondent's intended collection action or identify any
irregularity in the assessment process that would raise a
legitimate question about the validity of the assessment or
the information contained in the relevant transcripts.
E.g., Hughes v. United States, 953 F.2d 531, 536 (9th Cir.
1992) (holding that a notice of balance due constitutes a
notice and demand for payment within the meaning of Section
6303(a)); Elias v. Connett, 908 F.2d 521, 525 (9th Cir.
1990) (holding that a final notice of intent to levy, or
similar document, is sufficient to constitute notice and

demand within the meaning of Section 6303(a) because it informs the taxpayer of the amount owed and requests payment). In the absence of a valid issue for review, we conclude that Respondent is entitled to judgment as a matter of law sustaining the notice of determination dated October 19, 2005. Accordingly, we shall grant so much of Respondent's Motion for Summary Judgment, as supplemented, that seeks confirmation of the proposed levy.

Imposition of Penalty. We turn now to that part of Respondent's motion that seeks the imposition of a

penalty on Petitioner pursuant to Section 6673. As relevant herein, Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. The Court has indicated its willingness to impose such penalty in lien and levy cases, Pierson v. Commissioner, 115 T.C. 576, 580-581 (2000), and has in fact imposed a penalty in many such cases. E.g. Roberts v. Commissioner, 118 T.C. 365 (2002) (imposing a penalty in the amount of $10,000).

We are convinced that Petitioner instituted the present proceeding primarily for delay. In this regard, it

is clear that Petitioner regards this proceeding as nothing but a vehicle to protest the tax laws of this country and to espouse his own misguided views, which we regard as frivolous and groundless. In short, having to deal with this matter wasted the Court's time, as well as Respondent's, and taxpayers with genuine controversies may have been delayed.

Although not determinative to our decision, we note that Petitioner was warned during the course of the

administrative hearing that his arguments were frivolous and groundless. Petitioner was also expressly warned about this Court's authority to impose a penalty under Section 6673 and provided with a copy of our opinion in Pierson v. Commissioner, supra. Petitioner could have sought competent advice from a tax professional; rather, he chose to ignore the warnings and pursue unabatedly his tax protest agenda.

In view of the foregoing, we shall grant that part of Respondent's motion that seeks the imposition of a penalty and impose a penalty on Petitioner pursuant to Section 6673(a)(1) in the amount of $2,500.

In sum, we shall (1) grant Respondent's Motion for

Summary Judgment, filed September 20, 2006, and supplemented October 12, 2006; (2) decide that Respondent may proceed with collection for the taxable year 2000, as determined in the notice of determination dated October 19, 2005, upon

which notice this case is based; and (3) impose a penalty on Petitioner pursuant to Section 6673(a)(1) in the amount of $2,500.

This concludes the Court's oral findings of fact and opinion in this case.

(Whereupon, at 12:35 p.m., the bench opinion in the above-entitled matter was concluded.)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-1196

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Stamp October 26, 2007

ALFRED CAMPBELL, III,

Petitioner-Appellant,

v. ON APPEAL FROM THE
UNITED STATES TAX COURT

CIR

Respondent-Appellee.

ORDER

Before: KEITH and ROGERS, Circuit[1] Judges; ALDRICH, District Judge.

Alfred Campbell, III, appeals pro se from a tax court judgment that allowed the Internal Revenue Service ("IRS") to proceed with collection of his

---

[1]The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation

delinquent income taxes and imposed a penalty against him for filing a frivolous action. *See* 26 U.S.C. §§ 6330(d)(1)(A), 6673(a).

Campbell failed to file a timely tax return for the year 2000. The IRS issued a notice on February 4, 2004, advising him that his income tax was deficient. Campbell did not petition the tax court for a redetermination of the deficiency. Thus, on August 9, 2004, the IRS assessed the deficiency with additions and interest. The IRS sent Campbell a final notice of its intent to levy on December 21, 2004, indicating that he still had a tax liability of approximately $29,956. Campbell requested a collection due process ("CDP") hearing, primarily alleging that the calculation of his tax liability was mathematically incorrect. An IRS appeals officer advised Campbell that he could no longer raise the issue of liability because he had not petitioned the tax court for a redetermination of the deficiency that was noticed in February of 2004. The appeals officer issued a notice of [page 2] determination on October 19, 2005, which indicated that it was appropriate to collect Campbell's tax liability by levy

because the final notice of deficiency was procedurally correct, because his arguments were frivolous, and because he had not offered any alternatives regarding collection.

Campbell filed a timely petition in tax court, in which he argued that he was not liable for any income tax because IRS Form 1040 did not comply with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. §§ 3501-3520. The tax court granted the Commissioner's motion for summary judgment on November 13, 2006. The court held that Campbell was barred from challenging either the existence or the amount of his tax liability because he had not filed a timely petition for redetermination. *See* 26 U.S.C. §§ 6213(a), 6330(c)(2)(B). It also held that his arguments regarding the Paperwork Reduction Act were frivolous. Finally, the court imposed an additional $2,500 penalty because it found that Campbell had filed a frivolous action primarily for purposes of delay. *See* 26 U.S.C. § 6673(a). It is from this judgment that Campbell now appeals.

Campbell's underlying tax liabilities are not directly at issue here. Hence, the determination of the

appeals officer regarding the CDP hearing is reviewed for an abuse of discretion. *See Living Care Alternatives of Utica, Inc. v. United States*, 411 F.3d 621, 625-26 & n.5 (6th Cir. 2005). An abuse of discretion standard also applies to the tax court's decision to impose an additional penalty for filing a dilatory action. *See Wolf v. Comm'r*, 4 F.3d 709, 716 (9th Cir. 1993).

The IRS properly notified Campbell of his tax deficiency in February of 2004, and he failed to seek a timely redetermination of that deficiency in the tax court. Thus, the tax court properly determined that any claim regarding the existence or amount of his tax liability was barred by his failure to file a timely petition for redetermination. *See* 26 U.S.C. §§ 6213(a), 6330(c)(2)(B); *Living Care Alternatives*, 411 F.3d at 624. Campbell asserts that he may raise an argument under the Paperwork Reduction Act at any time. However, he was not prevented from raising that argument in the tax court, and the court plainly considered his argument when it denied him relief.

Campbell's arguments regarding the paperwork Reduction Act are also lacking in merit. He mainly relies on the following provision that was included in the 1995 amendments to the Act:

[page 3]

> (a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if-
>
> (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or
>
> (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.
>
> (b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

44 U.S.C. § 3512.

Campbell's reliance on this provision is misplaced because he was not penalized for failing

to comply with a collection of information that is subject to the Act. Instead, he was penalized for violating federal statutes that required him to file a tax return and pay his taxes. *See* 26 U.S.C. §§ 6012, 7203. A penalty was also imposed because he filed a frivolous and dilatory action in the tax court. *See* 26 U.S.C. § 6673(a). The Paperwork Reduction Act does not apply to these statutory provisions. *See, e.g., United States* v. *Wunder*, 919 F.2d 34, 38 (6th Cir. 1990).

Campbell now argues that the tax court improperly shifted the burden of proof to him to show that he was not liable for statutory penalties in addition to his tax deficiency. See generally 26 U.S.C. § 7491(c). This argument is unpersuasive because the court's opinion clearly indicates that the IRS met its burden of showing that Campbell's action was primarily instituted for purposes of delay and/or was based on a position that was frivolous. *See* 26 U.S.C. § 6673(a)(1).

Accordingly, the tax court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT Clerk

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

STEVEN W. POND, decided 1-04-07

Petitioner-Appellant, No. 06-9002

v. (United States Tax Court)

CIR,

Respondent-Appellee.

(CIR No. 10911-03)

ORDER AND JUDGMENT[1]

Before **HARTZ**, **EBEL**, and **TYMKOVICH**, Circuit Judges.[2]

Steven W. Pond failed to file federal income tax

---

[1] This order and judgment is not binding precedent except · under the doctrines of law of the case, res judicata and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 (eff. Dec.1, 2006) and 10th Cir. R. 32.1 (eff. Jan. 1, 2007).

[2] After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

returns or pay estimated taxes from 1995 to 2001. The Commissioner of Internal Revenue assessed Pond for his deficiencies in each of those years and charged him additional penalties pursuant to 26 U.S.C. §§ 6654 and 6651(a)(1). The Tax Court upheld those[-2-] assessments. Pond, proceeding *pro se*, disputes the penalties. He argues 1) the1040 Form (1040) issued by the Internal Revenue Service (IRS) fails to comply with the Paperwork Reduction Act of 1995, and 2) without a numerical value for the "exemption amount" provided by 26 U.S.C. § 6012(a)(1)(A), there is norequirement to file an income tax return.

Our jurisdiction to answer these questions arises under 26 U.S.C. § 7482(a)(1). As copies of 1040s from the relevant years were not included in the record for our review, Pond provides insufficient support for his first contention; it is therefore denied. Moreover, we reject his second contention, and AFFIRM the Tax Court.

I. Background

Steven Pond has operated a helicopter repair and maintenance company since 1980. From 1995 to

2001, he failed to file any federal income tax returns and did not pay any estimated taxes despite grossing in excess of $65,000 each year. On April 8, 2003, the IRS issued three notices of deficiency for the periods running 1995 to 1997, 1998 to 2000, and 2001. In its three notices, the IRS determined that Pond had failed to report any income from 1995 to 2001 and was liable for penalties under 26 U.S.C. § 6651(f), or alternatively §§ 6651(a)(1), and 6654.

On July 8, 2003, Pond petitioned the Tax Court for relief. The Tax Court rejected the penalties assessed by the Commissioner for Pond's fraudulent failure[-3-] to pay estimated tax, per 26 U.S.C. § 6654, because it determined Pond never intended to defraud the government. That finding is not challenged on appeal. The Tax Court upheld the Commissioner's assessment of penalties under §§ 6651(a)(1) and 6654 for Pond's failure to file returns and failure to pay estimated tax.

Pond challenges the U.S. Tax Court ruling on two bases. First, he asserts the 1040 issued by the IRS does not comply with the Paperwork Reduction Act

of 1995, and therefore he cannot be assessed penalties because he is protected by the Act's self-help provision found at 44 U.S.C. § 3512. Second, he insists that § 6012(a)(1) only requires the filing of a federal tax return when gross income equals or exceeds the "exemption amount" and he therefore does not have to file because allegedly no specific "exemption amount" was defined by the Internal Revenue Code.

II. Discussion

We review the Tax Court's conclusions of law *de novo* and its factual findings for clear error. *Jackson v. Commissioner*, 864 F.2d 1521 (10th Cir. 1989).

A. Paperwork Reduction Act of 1995 and the 1040 Form

The Paperwork Reduction Act was passed in 1980 with the hope of rendering federal requirements on small businesses less burdensome. To aid small The Director in question is the Director of the Office of Management 1 and Budget.[-4-] businesses in responding to governmental requests for information,

the 1995 amended version of the Act includes a self-help provision:

> (a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if –
>
> (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter;1
>
> or
>
> (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.
>
> (b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

44 U.S.C. § 3512.

Pond suggests that he cannot be penalized for failing to file the 1040, because the 1040 is a collection of information covered by the Paperwork

Reduction Act. He contends the 1040 bears neither of the items required by the Act: 1) a valid control number assigned by the Office of Management and Budget (OMB), or 2) proper notice that a person is not required to respond unless a valid control number is displayed. The Tax Court found Pond's arguments frivolous, addressed neither argument, and threatened him with future sanctions for bringing similarly frivolous arguments in subsequent proceedings.

For instance, while the 1040 is an information request, it might 2 be excepted from the provisions of § 3512 under the statutory origin theory discussed but neither adopted nor rejected in *United States v. Dawes*, 951 F.2d 1189, 1191–92 (10th Cir. 1991).[-5-]

The Supreme Court, however, has made clear that tax forms such as the 1040 are information collection requests within the meaning of the Act. *Dole v United Steelworkers of America*, 494 U.S. 26, 33 (1990) ("Typical information collection requests include tax forms, medicare forms, financial loan applications, job applications, questionnaires,

compliance reports, and tax or business records. These information requests share at least one characteristic: The information requested is provided to a federal agency, either directly or indirectly.") (internal citations omitted); *see United States v. Collins*, 920 F.2d 619, 630 n.12 (10th Cir. 1990). Therefore, we need to ask whether the 1040 is excepted from the two requirements set out above in 44 U.S.C. § 35122 and, if not, whether the 1040 complies with those requirements. But Pond did not include any of the 1040 that he challenges in the record for us to review, so we cannot address his arguments. With no support in the record for his petition of relief, we must deny his claim.

B. Specific Exemption Amount

Every individual with gross income equaling or exceeding the "exemption amount" is required to file a federal income tax return. 26 U.S.C. § 6012(a)(1). The relevant exemption amount is defined by 26 U.S.C. § 151(d). 26 U.S.C. § [-6-] 6012(a)(1)(D)(ii). Pond argues the lack of a specific amount designated by § 151(d) prevents penalizing him for non-compliance

as it is unclear whether his income exceeds the necessary threshold for mandatory filing.

Pond is mistaken: the Internal Revenue Code provides a specific amount. The exemption amount is generally defined as $2,000. 26 U.S.C. § 151(d). This general exemption amount is then modified by a cost-of-living adjustment as provided for by the Code's reference to the Consumer Price Index at 26 U.S.C. § 1(f)(3)–(6). The Code's provision of a specific number and statutory formula for adjusting that number defies Pond's contention that the exemption amount is inadequately defined for him to be penalized for noncompliance. We reject his argument.

III. Conclusion

For the foregoing reasons, we AFFIRM the Tax Court and order Pond to pay the taxes and additions assessed against him.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

91

(2)

07-992

FILED
APR 11 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the

SUPREME COURT OF THE UNITED STATES

ALFRED CAMPBELL, III

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for
the Sixth Circuit

PETITION FOR REHEARING

ALFRED CAMPBELL, III
2704 Gerald Ford West
Cordova, Tennessee 38016
901.218.3963

TABLE OF CONTENTS

INTRODUCTION 1

1. Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) does or does not apply. 3

2. Rehearing by this Court should be granted because until this Court fixes the division of the Circuits and Tax Court caused by this Court's Dole decision and the Paperwork Reduction Act of 1995, the public will continue to lose respect for decisions by this Court which can only lead to civil chaos13

CONCLUSION 19

CERTIFICATE OF PETITIONER 20

TABLE OF AUTHORITIES -continued

CIR v. Lane Wells Co. 321, U.S. 219, 223 (1944) 4

Colorado v. Spring, 479 U.S. 564 (1987) . . . 11,12

Dole v. U. Steelworkers, 494 U.S. 26,33 (1990) 1-14

Garner v. U.S., 424 U.S. 648 (1976) 17

Kastigar v. U.S. 406 U.S. 441 (1972) 18

Pennsylvania v. Muniz, 496 U.S. 582, 596 (1990) 14

Pond v. CIR, 2005-255 WL 18928(1-4-07)(10th) 1,13

Salberg v. U.S., 969 F.2d 379, 384(7th. 1992) 3,9,14

Ullmann v. U.S., 350 U.S. 422, 428 (1956) 14

U.S. v. Chisum, 06-7082 at 12 (slip)(10th.2007) 7-12

U.S. v. Collins, 920 F.2d 619 (10th Cir. 1990) . 9,12

U.S. v. Dawes, 951 F.2d 1189(10th Cir. 1991) . . 16

U.S. v. Kordel, 397 U.S. 1, 7-10 (1970) 18

U.S. v. Hicks, 947 F. 2d 1356, 1359-60(9th 1991) 3

U.S. v. Hubbell, 530 U.S. 27, 35 (2000) 4

U.S. v. Patridge, 06-3635(11-14-07)(7th.) 3,6,7,12,14

U.S. v. Priest, et al., 06-10438 (9th.Cir.2007) 3

U.S. v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986) 9

U.S. v. Washington, 431 U.S. 181, 188 (1977) . 15

Wolcott v. CIR, T.C. Memo. 2007-315. (fn.8) 12,19

INTRODUCTION

Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) does and does not apply.

Petitioner suggests this Court reconsider the holding in *Dole v. United Steelworkers*, 494 U.S. 26,33 (1990) that typical information collection requests are tax forms such as the 1040 and reaffirm this holding applies to the Paperwork Reduction Act of 1995 as it did the Act of 1980. Since holding tax forms are subject to the public

protection, 44 U.S.C. § 3512(1980), a division of the U.S. Circuit Courts and Tax Court has appeared, both directly after the Dole decision, and now this division has grown to such proportions that the Department of Justice is promoting the divided authority as a green light to continue disregarding Congress and its mandate that all territorial activity by the United States outside its sovereignty and within the sovereignty of any State, must comport with the Constitution of the United States.

Allowing the United States to think it invincible in respect to the rights of all Americans among the Several States is a dangerous message to send and allowing the division to go unfettered among Congress' Circuit Courts and its Tax Court caused by this Court's Dole decision and the Paperwork Reduction Act of 1995, only will continue cause Citizens to lose respect for decisions by this Court which can only lead to civil chaos.

ARGUMENT IN FAVOR OF PETITION

1. Because the penalty mandate by Congress that "no person shall be subject to" includes criminal penalties, and because the United States, acting through its agencies, within the territorial jurisdiction of the State, Tennessee, most certainly is eventually going to run into Article III, Section 2, Clause 2 and 3, in the pursuit of such forbidden penalties, this Court should exercise its appellate jurisdiction under Article III, Section 2, Clause 2, and fix the division amongst the Circuits regarding the meaning of when the protection pursuant to 44 U.S.C. § 3512(a) doesn't apply.

On November 14, 2007, the 7th Circuit Court of Appeals issued its decision in U.S. v. Denny R. Patridge, case number 06-3635. In its consolidated decision, the 7th Circuit stated it was reaffirming its decision in *Salberg v. U.S.*, 969 F.2d 379, 384 (1991), which held the "obligation to file a tax return stems from 26 U.S.C. § 7203, not from any agency's demand. The Paperwork Reduction Act does not repeal § 7203."

The 9th Circuit in U.S. v. Priest, et al., 06-10438, decided July 5, 2007, likewise concluded that the 1995 PRA "does not limit the impact of Hicks (947 F. 2d 1356, 1359-60) because we there held that 'repeals by implication are not favored.'"

The 7th and 9th Circuit's decision are contrary to this Court's holding in *CIR v. Lane Wells Co.* 321, U.S. 219, 223 (1944) that "Congress has given discretion to the Commissioner to prescribe by regulations forms of returns and made it the duty of the taxpayer to comply."

The 7th and 9th Circuit opinions also are contrary to this Court's decision in *Dole v. United Steelworkers*, 494 U.S. 26, 33 (1990) which held "typical information collection requests include tax forms" and that the public is to be protected.

The 7th and 9th Circuit's opinion is also contrary to this Court's decision in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) which held "incriminating evidence may be the by-product of obedience to a regulatory requirement."

The decision by the 7th and 9th Circuits completely rejected the direct words of the Paperwork Reduction Act of 1980 and 1995 which both begin at section 3512 "Not withstanding any other provision of law no person shall be subject to any penalty..." The 7th Circuit admits the term "return" is not defined by any Act of Congress and ignores the logical follow that is the request derives from regulations.

The 7th Circuit takes the leap by saying they have "no doubt that the IRS has complied with the Paperwork Reduction Act." "The control number on Form 1040 appears on OMB's web site as a current, valid number; if this is wrong, it takes more than a lawyer's say-so to establish the proposition."

The 7th Circuit's position is contrary to the direct language of the Paperwork Reduction Act of 1995 as well as this Court's decision in Dole. The 1995 Act directs a "complete defense, bar, or otherwise" may be raised at any time. The

protection would begin upon either a person's "say-so" or upon an Attorney claiming the protection for his client. Look at how the 7th Circuit handled the issue.

The mandates by Congress at 44 U.S.C. § 3506(c)(1)(B)(1995), which among other things, directs the Agency to inform the target the reason why the questions are being asked and how the information is to be used, is an exercise by Congress in regulating the relationship between the United States when it is asking for information within the territorial jurisdiction of any State from Citizens domiciled therein.

See also 5 U.S.C. §552(a) where Congress requires the same list of disclosure for the IRS as section 3506(c)(1)(B) of Title 44.

This Court said in Dole:

> "While the grammar of this text can be faulted, its meaning is clear: **the public is protected under the Paperwork Reduction Act** from paperwork regulations not issued in

compliance with the Act, only when those regulations dictate that a person maintain information for an agency or provide information to an agency. **By its very terms, the statute's enforcement mechanism** does not apply to rules which require disclosure to a third party rather than to a federal agency." Id. at 40

Furthermore, the Patridge panel said "How any of this could block a conviction for tax evasion is a mystery."

The 10th Circuit has steadfastly remained[1] a strong proponent of the Dole holding with their most recent deposit on the reach of protection for the public in *USA v. Chisum*, 502 F.3d 1237 (10th Cir.2007)

Chisum held:

C. The Paperwork Reduction Act (PRA)

The PRA, 44 U.S.C. § 3501-20,

---

[1]Petitioner understands thus far the Tenth Circuit has actually given no relief under the 1980 or 1995 Act while they continue to direct where and when such relief is to be given.

> precludes the imposition of any penalty against a person for "failing to comply with a collection of information" if either (1) it "does not display a valid control number" or (2) the agency fails to alert the person that he or she "is not required to respond to the collection of information unless it displays a valid control number." 44 U.S.C. § 3512(a). A § 3512(a) defense may be raised at any time. See id. § 3512(b). Tax forms are covered by the PRA. See Dole v. United Steelworkers of Am., 494 U.S. 26, 33 (1990).... But the PRA protects a person only "for failing to file information. It does not protect one who files information which is false." Collins, 920 F.2d at 630 n.13 (internal quotation marks omitted). The charges against Mr. Chisum were predicated on the filing of false information, not the failure to file. He is therefore not entitled to relief.

Article III, Section 2, Clause 2, directs this Court is with "appellate jurisdiction" over the issues herein as well as the issues herein will soon appear under Article III, Section 2, Clause 3, in

the trial of crimes alleged committed within any State involving such information being collected.

In *U.S. v. Collins*, 920 F.2d 619 (10th Cir. 1990) the 10th Circuit, prior to the 7th Circuit's decision in Salberg, stated

> [fn12]In *U.S. v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986), this court held that tax forms were not information collection requests subject to the Paperwork Reduction Act because the filing of income tax returns was obligatory. **This holding[2] is superseded by the Supreme Court's analysis in Dole v. United Steelworkers,** ___ U.S. ___, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), which included federal income tax forms within the category of information collection requests under the Act. Dole would also appear to call into question the holdings in Snyder v. IRS, 596 F. Supp. 240 (N.D.Ind. 1984) and Cameron v. IRS, 593 F. Supp. 1540 (N.D.Ind. 1984), aff'd 773 F.2d 126 (7th Cir. 1985), both of which held the Paperwork

---

[2]No doubt Dole is a "Holding."

Reduction Act inapplicable to IRS forms. However, Dole does not contravene our recent holding in Lonsdale v. U.S., 919 F.2d 1440, 1444 (10th Cir. 1990) that IRS summonses do not constitute information requests under the Act because they are issued in the course of an investigation directed against a specific individual or entity. See 44 U.S.C. § 3518(c)(1)(B)(ii).

[fn13] In U.S. v. Weiss, 914 F.2d 1514, 1520-22 (2d Cir. 1990), the Second Circuit held that the Paperwork Reduction Act did not preclude prosecution for filing false medicare and Medicaid claims, despite the fact that the forms in question did not contain OMB control numbers. Distinguishing Smith, where defendants were prosecuted for failure to file a Plan of Operations with the Forest Service, the Second Circuit reasoned that the Act "`only protects a person from penalties for failing to files information It does not protect one who files information which is false.'" Id. at 1522 (quoting Funk, The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law,

> 24 Harv.J. on Legis. 1, 77 n. 411 (1987)) (emphasis in original). We recognize that because defendant was charged with tax evasion and not failure to file tax returns, he technically was not being prosecuted for failure to provide information. Had defendant's tax evasion been effectuated through the filing of falsified tax returns, Weiss would dictate that no Paperwork Reduction Defense would be available to him. **But because the provision of information in 1040 forms is inexorably linked to the statutory requirement to pay taxes, and defendant failed to file such forms, the Paperwork Reduction Act was applicable to such conduct.** Emphasis added.

Petitioner claims the Chisum Panel[3] is partly incorrect. The Chisum Panel nine months earlier held in *Pond v. CIR*, T.C. Memo 2005-255 WL 18928, decided January 4, 2007, Tax Court was wrong for directing Pond, by raising a defense against penalty and interest claims, of the

---

[3]Same 10th Circuit but different Judges.

Secretary, he was acting in a frivolous manner.

The 7th Circuit in Patridge says it cannot understand how "tax evasion" and the public protection provision of the Paperwork Reduction Act are connected, describing this as a "mystery" while the 10th Circuit says Forms like the 1040 are "inexorably linked to the statutory requirement to pay taxes..." Collins, fn13, Chisum, pg. 12

The 1980 Act at issue in Collins and Dole protected the public from penalties for failing to maintain or provide information while the 1995 Act protects the public from failing to comply with a collection of information. The 1995 Act also says the OMB number must be issued in "accordance with this chapter" and defense, bar or otherwise, can be raised at any time.

Simply, the decisions show why this Court needs to address the reach of the public protection provided by Congress to each of the several States at 44 U.S.C. § 3512(a)(1995).

Then there is the Tax Court's refusal to

accept the 10th Circuit's decision in Pond v. CIR. See *Wolcott v. CIR*, T.C. Memo. 2007-315. (fn.8)

The relationship between the United States Agencies and the Citizens within the territorial jurisdiction of the several States involving gathering information and usage of same is in need of specific uniform enforcement, and to which blatant error of Constitutional proportion exists in the refusal of the U.S. Department of Justice, Commissioner of I.R.S., U.S. Tax Court and the several U.S. Court of Appeals, in rejecting both the law, history and decisions governing the Paperwork Work Reduction Act of both 1980,1995, and the reasons both acts arose in the first place. With many violations comes many cases which can be prevented by granting this Petition for rehearing.

2. Rehearing by this Court should be granted because until this Court fixes the division of the Circuits and Tax Court caused by this Court's Dole decision and the Paperwork Reduction Act of 1995, the public will continue to lose respect for decisions by this

Court which can only lead to civil chaos.

The 7th Circuit says the requirement of Citizens within the territorial jurisdiction of any one of the Several States to answer questions on Form 1040 comes from 26 U.S.C. § 7203 in both Patridge and Salberg. Section 7203 is a criminal provision. This makes the 7th Circuit's theory that the IRS, by asking Citizens within the territorial jurisdiction of any one of the Several States to answer their questions on the 1040, not only is the IRS conducting an investigation with the 1040, but a criminal investigation at that.

In *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990) this Court explored short of the "outer boundaries of what is 'testimonial'" and that the protection primarily was to prevent "a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality..." *Ullmann v. U.S.*, 350 U.S. 422, 428 (1956) This Court went on to say "it is evident that a suspect is 'compelled . . . to be a witness against himself' at least whenever he

must face the modern-day analog of the historic trilemma[4] - either during a criminal trial where a sworn witness faces the identical three choices, or during custodial interrogation where, as we explained in Miranda, the choices are analogous and hence raise similar concerns." Id.

In *Colorado v. Spring*, 479 U.S. 564 (1987) this Court compared the "right to refuse to answer any question which might incriminate," citing *U.S. v. Washington*, 431 U.S. 181, 188 (1977) and directed it was "self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." Ibid.

There, it was said a "valid waiver does not require that an individual be informed of all

---

[4]cruel trilemma means self-accusation, perjury or contempt, defining the operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury.

information 'useful' in making his decision or all information that 'might . . . affec[t] his decision to confess.' *Moran v. Burbine*, 475 U.S., at 422. This Court has "never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." Colorado at 577 In regard to an Agency request for information, Congress has made this requirement through the Paperwork Reduction Act of both 1980 and 1995 very clear.

If a Federal Agency refuses to tell a person why they are asking questions of any Citizen or group of Citizens domiciled within one of the Several States and how that agency intends to use those answers, the only choice remaining for members therein is the act of remaining silent without threat or being "subject" to any penalty.

In *U.S. v. Dawes*, 951 F.2d 1189 (fn.2)(10th Cir. 1991), the 10th Circuit reported on the troubling aspect of not enforcing the Paperwork

Reduction Act in a unified manner, the Court stated:

> "In response to a question from the court during oral argument, counsel for the government indicated that the government did not have a unified federal position regarding this issue. Given the fact that the issue is one of national scope which affects the tax revenues of the U.S., we find this posture regrettable."

The same problem exists today as depending on which one of the Several States a State Citizen lives in determines whether he or she can be penalized for remaining silent or not.

In *Garner v. U.S.*, 424 U.S. 648 (1976) this Court started with "the fundamental proposition:

> A witness protected by the privilege may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." quoting *Kastigar v. U.S.*, 406 U.S. 441

(1972).
Id. at 656

The Court has held that an individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege. *U.S. v. Kordel*, 397 U.S. 1, 7-10 (1970).

Given the evidence the U.S. Agencies are refusing to recognize or direct compliance with the 1995 Paperwork Reduction Act, continuing to emphasize the Paperwork Reduction Act of 1980 instead, and that a deep divide exists between the 7th Circuit in Patridge and Salberg with the 10th Circuit in Collins, Dawes, Pond and Chisum, as well as the Tax Court's public display of defiance to the 10th Circuits Pond decision it reported in Wolcott, as well as such blatant defiance by the 7th Circuit and Tax Court for this Court's decision in Dole and Congressional mandates within the Paperwork Reduction Act of 1995, should compel this Court to rehear the matters in this case.

CONCLUSION

For the foregoing reasons Petitioner suggests this Court Grant this Petition for Rehearing and exercise its appellate jurisdiction to make final matters involving the Paperwork Reduction Act of 1995 between Citizens within the territorial jurisdiction of any State, in this case Tennessee, and any Agency who has both a civil and criminal purpose for seeking information from such Citizens therein.

Respectfully Submitted

4.10.08 /s/ Alfred Campbell, III

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Petition for Rehearing is presented in good faith and not for the purpose of any delay, whatsoever, and is limited to substantial and controlling issues involving recent decisions by the 7th, 9th and 10th Circuit, which divide the United States Agencies with Citizens within the territorial jurisdiction of any State, in this case Tennessee, on the application and reach of the Paperwork Reduction Act of 1995 and the fifth amendment tones remaining silent may trigger, only strengthening why this Court should Grand this Petition for Rehearing.

/s/Alfred Campbell, III